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THE WHITE HOUSE

WASHINGTON

March 13, 1987

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM: EUGENE J. McALLISTER EM

SUBJECT: Agenda and Paper for the March 16 Meeting

The agenda and paper for the March 16 meeting of the Economic Policy Council are attached. The meeting is scheduled for 11:00 a.m. in the Roosevelt Room.

The single agenda item will be a discussion of trade legislation. A paper prepared by USTR outlining recent changes to the House trade bill is attached.

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ECONOMIC POLICY COUNCIL

March 16, 1987

11:00 a.m.

Roosevelt Room

AGENDA

1. Trade Legislation

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THE CO-CHAIRMEN'S PROPOSAL

As of 3/13/87, after Subcommittee Markup: Analysis and Comparison with H.R. 3

SUMMARY

On March 9, Chairman Rostenkowski of Ways and Means and Chairman Gibbons of the Ways and Means Trade Subcommittee issued a new Co-Chairmen's Proposal on Comprehensive Trade Policy Reform Legislation. This Proposal is a substitute for parts of H.R. 3 (which reprinted H.R. 4800, the House Omnibus Trade Bill of last year).

The Trade Subcommittee made a few marginal changes to the Proposal in its markup on March 11 and 12. The Proposal now goes to the full Committee, where markup will begin on March 17. As was the case last year, a comprehensive bill will be assembled (with the Ways and Means bill as the centerpiece), with floor action expected in the last week of April.

While the Chairmen have made a serious effort to accommodate Administration concerns, significant problems remain. We can see already the outlines of the position Ways and Means will stake out for the conference. And on a number of issues important to us, this position is one that could be helpful to us in eventual bargaining with the Senate.

-- Although we have not achieved all of our objectives, the trade negotiating authority provided in the Proposal is free from unacceptable conditions, with automatic access to fast track implementation and tariff proclamation authority with no product exclusions. This is essentially the authority that our bill asks for.

-- The Proposal also eliminates some of the GATT problems in H.R. 3. Proposals on perishables relief and provisional relief in section 201 have been changed to make them GATT-consistent; deadlines for dispute settlement in 301 cases have been made livable; steel provisions that would have violated our bilateral agreements have been changed.

-- There has also been movement on Administration policy concerns. The Proposal eliminates tripartite industry-government-labor policy planning groups from its section 201 proposals. It eliminates mandatory self-initiation of 301 cases, retains broad exceptions to mandatory retaliation in 301 cases, and eliminates the worst of the problems with export targeting. The Proposal also incorporates many of the Administration's legislative proposals.

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Problem provisions remain, however. The most notable include:

-- Congressional interference with the organization of trade policymaking, through unwarranted transfers of authority. The Proposal transfers to the USTR Presidential authority under sections 201, 301, 337, 406, and for GSP.

-- Intrusion into international monetary policy, by setting statutory targets for exchange rates, and by requiring the USTR to renegotiate some exchange rates.

-- The "Gephardt Amendment" proposal on retaliation against "excessive surplus" countries, although it has been improved by removing the mandatory 10% reduction in certain bilateral trade deficits each year.

-- A "worker rights" cause of action that makes lack of a minimum wage, or denial of the right to unionize, grounds for trade retaliation.

-- Antidumping/CVD proposals such as private right of action for dumping, diversionary dumping, and natural resources subsidies.

-- A sectoral reciprocity scheme in telecommunications.

SECTION-BY-SECTION ANALYSIS

Negotiating Authority/Congressional and Private Sector Consultation

This is the area of the Proposal where the greatest care has been taken to respond to Administration concerns. The Proposal incorporates many of the general and specific negotiating objectives in our bill, and incorporates our bill's provisions on consultation with Congress and the private sector. Most important, it provides negotiating authority that is close to what we have asked for.

It provides non-tariff authority with automatic access to fast track implementation until Jan. 3, 1991. Only the optional 2-year extension is subject to 60-day Committee veto. Even with the Committee veto, this is a far better approach than that in S. 490.

Proclamation authority for tariffs is provided until Jan. 3, 1993. H.R. 3 provided such authority only until 1991, with a possible 2-year extension. A textile amendment excluded import-sensitive products from proclamation authority (which would force a record vote on tariff cuts). The Proposal deals with the import-sensitivity problem by putting a ceiling of 60 percent for cuts on such products, and making such tariff cuts subject to a 10-year phase-in requirement. These conditions are far preferable

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to the product exclusions in H.R. 3, as the products excluded account for a major part of U.S. tariff protection.

Findings and Actions on Trade Deficit Reduction

This new subtitle includes findings and a statement of policy on reduction of trade and current account deficits and exchange stabilization. It requires yearly reports by the President on his progress in reducing the trade deficit.

Section 301

The "Gephardt amendment" to H.R. 3 has been significantly cut back, but is still unacceptable. As revised, the ITC would annually identify "excessive trade surplus" countries according to specified criteria (which would initially hit Japan, Korea, Taiwan, Brazil, and West Germany). The USTR would then determine which of these countries maintain a pattern or practice of unfair trade policies or practices.

USTR would then negotiate for 6 months (with a possible 2-month extension) to achieve a more balanced and reciprocal bilateral trading relationship through a bilateral agreement that reduces unfair policies or reduces their effects on U.S. commerce. If negotiations do not succeed, USTR must take action (tariffs, import restrictions or other actions authorized by existing law) against all unfair practices, equal to the burden or restriction. USTR could waive retaliatory action against "unjustifiable" practices if retaliation would cause substantial harm to the national economic interest; for other practices, he could waive retaliatory action if the economic harm caused by retaliation exceeded the harm caused by the unfair practice. Waivers would be subject to Congressional override.

This modification is an improvement over the original Gephardt amendment, which required surplus reduction targets of 10 percent per year, and would have pushed us into import quotas in every case. However, the Proposal has added an unnecessary and unwise requirement that USTR determine whether any "excessive surplus country" maintains its currency at an artificially low level, and negotiate with these countries to seek currency realignment. The provision authorizes trade retaliation if negotiations fail (including an exchange rate equalization tariff, which would tend to push the dollar up). The most fundamental problem with the revised Gephardt amendment is that it contemplates bilateral trade balancing through trade policy rather than macroeconomic policies.

The Proposal still provides for mandatory retaliation in Section 301 cases involving trade agreement violations or other "unjustifiable" practices. However, it keeps H.R. 3's exceptions to mandatory retaliation -- if the GATT council or a panel finds

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there is no violation of U.S. rights; or if the President finds that (a) the foreign country is taking satisfactory measures to grant U.S. trade agreement rights or (b) there is a satisfactory resolution by agreement, or (c) phaseout of the practice is impossible but the country agrees to compensate us, or (d) retaliation is not in the U.S. national economic interest. These exceptions leave the President almost as much discretion as he now has in section 201 cases. The President would retain unlimited discretion in cases involving "unreasonable" and "discriminatory" practices.

The worker rights provision still makes denial of certain worker rights (the right to organize and bargain collectively, a ban on forced labor, a minimum age for child labor) actionable under section 301. Cong. Pease has tried to improve this provision for us by taking into account a country's level of economic development in deciding whether lack of wage and hour laws and occupational safety and health standards will be actionable, and letting USTR ignore foreign labor rules if the country concerned is taking steps to afford such rights (in the whole country or in any zone). But this provision is still unacceptable as it stands.

Like H.R. 3, the Proposal makes targeting actionable under 301. Unlike H.R. 3, targeting is only actionable if the USTR determines that it is (or threatens to be) a significant burden or restriction on U.S. commerce -- a significant improvement. Action is mandatory unless the burden is only threatened; where mandatory, action need not be taken where contrary to the national economic interest (if this exception is invoked, an industry-labor panel must advise on measures to improve the industry's competitiveness). Action may consist of retaliation or a settlement agreement.

The Proposal eliminates H.R. 3's provisions on mandatory self-initiation of 301 cases. In the markup, the time limits were lengthened to 5 months for bilateral consultations and then 13 months in GATT cases for the panel process (a figure we believe we can live with).

Escape Clause Relief (Section 201)

The Proposal's provisions on section 201 show significant movement toward a bipartisan consensus that rejects industrial policy devices. H.R. 3 mandated submission of adjustment plans, drawn up by a tripartite government-industry-labor groups. The Proposal provides for voluntary (not mandatory) submission of an adjustment statement. The petitioner will have the opportunity to develop a plan jointly with other industry members, but tripartite groups have been eliminated. However, the government would be required to consult on these voluntary statements, a provision inconsistent with Administration positions.

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The Proposal largely adopts our proposal on fast track relief for perishable agricultural products, in place of the GATT-illegal version in H.R. 3. It also modifies the H.R. 3 proposal on provisional relief in section 201 cases to answer our legal objections. The Proposal adopts our language on treatment of recessionary conditions in the ITC's analysis of causation of serious injury.

Like H.R. 3, the Proposal transfers escape clause review authority from the President to USTR. The Proposal requires the ITC to find the form and level of relief that will be most effective to prevent or remedy the serious injury and facilitate efforts by the domestic industry to enhance its long-term competitiveness. USTR would be required to provide import relief unless it would threaten national security, or economic costs outweigh benefits; this would not substantially limit discretion to deny relief. (If the ITC's recommendation is rejected, USTR must explain the reasons in detail to Congress). These provisions are not acceptable.

Like H.R. 3, the Proposal requires annual follow-up reports by the ITC on adjustment and conditions of competition. Also, where changes in the relief are needed to prevent circumvention, reflect industry adjustment, or respond to exchange rate changes, the Proposal authorizes the ITC to recommend such changes to USTR.

The Proposal establishes an adjustment assistance trust fund as in H.R. 3, and newly provides for automatic certification of TAA petitions by workers and firms in an industry found to be seriously injured, for petitions filed within 3 years of the ITC determination.

Antidumping/CVD Changes

The Proposal has adopted most of the Administration's antidumping/CVD proposals, and has reduced some of our problems. However, it leaves out at least one of our proposals (indirect tax pass through), and major problem provisions remain that would unquestionably violate our international obligations.

The Proposal has dropped H.R. 3's provision on natural resource subsidies, substituting a generic fix that makes countervailable any benefit that has the effect of aiding an industry (such as roads or irrigation). It also pushes for use of external benchmarks (i.e., U.S. practice) in judging whether a country's internal practices are subsidies. These are unacceptable.

Another major problem is the private right of action for dumping. The Proposal drops H.R. 3's provision on a private right of action, but substitutes a Semiconductor Industry Association proposal that is improved but still unacceptable. It provides for

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monitoring of imports from companies that are found multiple times to be dumping, and self-initiation of antidumping cases by Commerce. However, 3 antidumping findings against the same company would establish a rebuttable presumption of intent to injure a U.S. industry, in suits for (single) damages under the 1916 Antidumping Act. This rule discriminates against imports and violates the GATT.

The third major problem is diversionary dumping. H.R. 3 proposed to attack diversionary input dumping (imports incorporating dumped inputs) by having Commerce arbitrarily adjust the dumping margin on the downstream product to reflect the advantage conferred by purchase of the dumped input. The Proposal would still impose antidumping duties on finished goods that contain dumped inputs, although only major inputs would be eligible for scrutiny, and more flexibility is provided for adjustments. However, this proposal still clearly violates the GATT.

The Proposal responds to our concerns by providing discretion for the ITC to eliminate cases against negligible imports from marginal supplier countries by excluding these countries from cumulation of injury. It also replaces a special-interest provision in H.R. 3 for the cement industry with a neutral generic provision, and drops targeting as a factor for determining threat of material injury.

Intellectual Property Rights

There has been no change in proposals for section 337. The Downey amendment of last year (MPAA's proposal for a sectoral reciprocity program) has been substantially modified to avoid creation of a separate, sector-specific trade remedy for intellectual property rights (IPR) with mandatory retaliation. Instead, IPR problems are dealt with under section 301 and retaliation remains discretionary.

Functions of the USTR

H.R. 3 proposed codification of the provisions of Reorganization Plan No. 3 of 1979 on USTR responsibilities. The Proposal's provision on this point is essentially unchanged. It adds a sense of Congress that the USTR go to economic summit meetings, and that the USTR be the senior representative on any body the President establishes to advise him on economic policies in which trade matters predominate. H.R. 3 prescribed the membership of the TPC; so does the Proposal, and adds to the TPC's duties.

The Proposal keeps H.R. 3's proposal (which we did not oppose) requiring an annual trade policy agenda statement to the trade committees. On the other hand, the Proposal drops H.R. 3's proposal (which we strongly opposed) for a fair trade advocate inside USTR to represent petitioners before Commerce and the ITC.

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In addition, individual provisions elsewhere in H.R. 3 transfer to USTR the President's authority to make unfairness determinations in section 301 cases, to review ITC determinations in section 201 and section 337 cases, to make GSP decisions and to act in section 406 cases (market disruption by NME imports). The Proposal maintains these transfers of authority.

H.R. 3 proposed to require re-confirmation of the ITC Chairman and Vice-Chairman by the Senate; the proposal drops this provision, targeted at Chairman Liebeler.

Miscellaneous Trade Law Provisions/Tariffs

H.R. 3 proposed amending section 232 to shorten the deadline for the Commerce Department investigation from the present 1 year to 90 days, and to require Presidential decision in 30 days and action in another 15. The Proposal relaxes these deadlines to 9 months for Commerce, 90 days for the President and 15 days to proclaim action.

H.R. 3 required that downstream steel products be counted against the export quota of the country where the steel in them was melted and poured. This would have violated all of our bilateral steel VRAs. The Proposal keeps the provision but makes it non-mandatory.

"Scofflaw penalties" in H.R. 3 provided that importers convicted three times of customs fraud or gross negligence would be barred from importing any product for 7 years. In response to retail industry concerns, this has been cut back to cover civil or criminal customs fraud only.

New items in the Proposal include authorization of product-by-product withdrawal of CBI treatment (for instance, in case of broadcast piracy); a requirement that the ITC perform annual studies on the conditions of competition in key sectors of the U.S. economy and their implications for national economic security (to be factored into USTR's annual Trade Policy Agenda); and a requirement that the President submit a competitiveness impact statement to the trade committees of Congress in advance of any relevant regulation, executive order, agreement or proposed legislation.

There are no new proposals otherwise among the miscellaneous trade law and tariff provisions. Last year's sense-of-Congress provision on U.S. semiconductor negotiations has been dropped (overtaken by events). The Proposal liberalizes imports of Soviet furskins and implements the Nairobi Protocol and the International Coffee Agreement, as the Administration has requested.

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Telecommunications

The Proposal retains H.R. 3's telecommunications title, which incorporates Cong. Matsui's bill. It provides that within 6 months after enactment, USTR must identify and analyze foreign acts, policies or practices that deny fully competitive market opportunities (FCMO) to the telecommunications products and services of U.S. firms. USTR must set specific objectives for each country to reach FCMO, and negotiate with all countries that deny FCMO. If agreement cannot be reached within 18 months after enactment, the President must take action to achieve the USTR-set objectives. USTR must conduct annual reviews of past telecommunications agreements. We have objected strongly to this proposal all along, and we still object, both because we fundamentally object to sectoral reciprocity and because we object to mandatory retaliation.

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